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80-0150

OGC 80-09579
6 November 1980

02,575

OGC Has Reviewed

MEMORANDUM FOR: Director, National Foreign Assessment Center
Deputy Director for Administration
Deputy to the DCI for Resource Management
Deputy to the DCI for Collection Tasking

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FROM: [REDACTED]
Assistant General Counsel

SUBJECT: Issuance of Exemption Directives Under
the Foreign Corrupt Practices Act

1. This memorandum requests your assistance with respect to the issuance of exemption directives under the Foreign Corrupt Practices Act. In the past this Office has advised Agency directorates of the enactment and general scope of the Foreign Corrupt Practices Act of 1977 and further pointed out the existence of an amendment to the Act which, in effect, permits CIA to issue directives to a publicly held corporation exempting it from the Act's "accuracy in corporate records" requirements with respect to classified matters in which the corporation is acting in cooperation with the Agency in the interests of national security. In order to facilitate compliance with certain threshold requirements imposed under the amendment, we deemed it necessary to compile and submit for White House approval a list of the types of CIA/publicly held corporation relationships for which specific directives would be issued. To this end, on 4 January 1978 [REDACTED] of this Office requested all directorates to provide this Office with a complete list of generic categories of classified associations components have with U.S. publicly held corporations which, by virtue of their classified nature, could require the corporation involved to make false or misleading entries on its internal books, records, or accounts.

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2. Based on the input provided by each directorate, we prepared a letter for the DCI's signature to Zbigniew Brzezinski, Assistant to the President for National Security Affairs, outlining and formally seeking White House approval for the issuance by CIA of specific exemption directives to cover six particular categories of classified relationships between the Agency and publicly held corporations. Before forwarding the proposed letter to the DCI, this Office coordinated the letter among each of the concerned components in each directorate

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to ensure that the categories adequately covered all of the kinds of associations which had been cited in their previous input. Once this coordination was completed, the letter was presented to the DCI, who signed and sent it to Dr. Brzezinski on 13 March 1978. A copy of that letter is attached for your reference. Subsequently, the White House by memorandum dated 4 April 1978 formally authorized CIA to issue specific written exemption directives under each of the six categories. Finally, on 18 April 1978, the DCI delegated to this Office responsibility for the establishment and implementation of procedures to govern and regulate CIA's use of the so-called "national security" amendment, and he further authorized OGC to draft and sign the actual exemption directives to corporations who are acting in cooperation with any Agency component in one or more of the six categories of classified matters related to the national security.

3. Your assistance is requested to ensure that each concerned component under your jurisdiction which has reason to believe that a specific directive may be necessary to protect the confidentiality of a given contractual or other relationship with a publicly held corporation is apprised of and adheres to the following procedures. First, the component may make the request for exemption directive (or, for that matter, may merely inquire as to whether or not an exemption directive is required in a given case) by means of a memorandum to the Operational Support Division of this Office. Second, the request should contain the following pertinent data: a) the name of the corporation involved together with the name and title of the corporate official to whom the directive will be issued; b) a concise description of the relationship it has with CIA along with any background materials which may be useful in this regard; c) the anticipated kinds of false statements it may be required to make on its corporate books and/or to its internal auditors; and d) the name and extension of the Agency employee who is the designated point of contact with the corporation for the relationship in question.

4. In order to both fulfill the Agency's legal responsibilities under the Act as well as to facilitate the administration of the exemption directive program, this Office has also established certain basic internal ground rules which will be followed, unless extraordinary considerations dictate otherwise in a given case. First, and perhaps most importantly, it should be understood that the amendment requires that a specific directive be issued to cover each relationship; for example, if there are two unrelated classified CIA contracts with a

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given corporation, it will be necessary to issue two specific directives to the corporation to cover each contract. Second, we have determined that so-called "SC-1" contracts (where the contract is identified merely as "U.S. Government" or "U.S. Government classified" on corporate books) in and of themselves do not come within the scope of the Act since no affirmative misrepresentations are made on the corporate books; thus, it will not be necessary to seek or issue directives to cover "SC-1" contracts of the type described above provided, of course, that no false statements related to the contract will otherwise appear on the corporation's internal records. Third, the actual directive will be classified and issued on CIA letterhead apart and distinct from the original contract, letter of agreement, etc., and will be hand-carried for the review and written acknowledgement of a cleared, witting senior corporate official by the Agency official who is the point of contact with the corporation with respect to the relationship involved. Upon execution, the original directive should be returned to this Office for filing, with the component retaining a copy. Under no circumstances will the corporation be allowed to retain the original directive, and a copy will only be left in those cases where the corporation both insists on having one and has approved facilities for the storage of classified material. Fourth, OGC personnel will be made available, as needed, to explain the scope of the directive and/or the national security amendment to any appropriate corporate official who raises any questions in these areas or wishes to show the directive to corporate counsel; the Agency contact who encounters any inquiries or problems in these areas should promptly seek the advice and assistance of the Operational Support Division of this Office. Fifth, in light of the amendment's proviso that an exemption directive can remain in effect for only one year absent a timely renewal, this Office will continue the procedure whereby the component responsible for a given directive in force will be queried approximately one month prior to the expiration date as to whether or not the directive must be renewed.

5. This Office greatly appreciates your assistance in ensuring that the Agency's exemption directive program is carried out in an efficient, secure, and legally correct manner. Of course, we are prepared to consider any additional comments or questions which may arise in the course of the program. Given the particular circumstances and details of each relationship, we recognize and expect that the decision on whether or not an exemption directive is necessary will

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largely be made on a case-by-case basis. As a final caveat, we should emphasize that at this juncture we are only authorized to issue directives to cover relationships which can be construed to fall within one of the six previously approved categories, which are identified in the accompanying letter. Thus, although components should forward for review any and all situations where the disclosure requirements of the Foreign Corrupt Practices Act may impact on a confidential CIA/corporate relationship, you should be aware of the possibility that in some instances it may be necessary to secure prior DCI and White House approval before a directive can be issued to cover a heretofore unforeseen type of relationship. If you have any questions or comments please do not hesitate to contact me [redacted]

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Att.

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Date 12 NOV 1980

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Action	File	Note and Return
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Comment	Investigate	Signature
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REMARKS

As indicated in the attached, the Office of General Counsel (OGC) is requesting your assistance, as appropriate, in administering the Agency's implementation of the Foreign Corrupt Practices Act of 1977. If action on your part is appropriate, please correspond directly with OGC. I would appreciate a copy of any formal correspondence you initiate with OGC.

I am available to discuss it with you at your convenience.



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FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.
7C18 Hqs

Chief, Management Staff, DDA

Phone No.

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Dave: Given the P.2 exclusion

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*of SC-1 contracts, I don't believe
this applies to us. Plo confirms.*

Thx
J

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